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APPROVED FOR
RELEASE ☐ DATE:
18-Aug-2010

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5 December 2007

Scott A. Koch
Central Intelligence Agency
Information and Privacy Coordinator
Washington, D.C. 20505

2007 DEC -5 PM 7:50

Re: FOIA Request – Boening v. CIA, Civil Action No. 07-430 (DDC)(EGS)

Dear Mr. Koch:

This is a request on behalf of The James Madison Project under the Freedom of Information Act, 5 U.S.C. § 552, et seq., for a copy of the documents that comprise Exhibits "A" – "OOOO" which were submitted in support of the Declaration of Franz Boening in the lawsuit of Boening v. CIA, Civil Action No. 07-430 (D.D.C.)(EGS). The cover Exhibit sheet that was publicly filed in the lawsuit is enclosed.

In his sworn declaration, which was cleared for public filing by the CIA (a copy of which is also enclosed), Mr. Boening described these nearly one hundred documents as domestic and international news accounts including published newspaper and magazine articles. See ¶¶3-5,7,11,22. Based on these documents, Mr. Boening drafted a May 10, 2001 Whistleblower Complaint.

These publicly available documents were submitted to the CIA for classification review as part of the Boening litigation and apparently – given that Mr. Boening was not permitted to file them as part of his lawsuit – are now considered classified.

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project

We are hereby requesting a waiver of all fees. The James Madison Project is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning our activities have received prominent mention in many publications including, but not limited to, *The Washington Post*, *The Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones* and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>. Prior requests submitted by our organization have all received fee waivers.

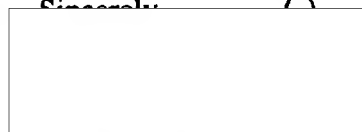
The CIA is required by law to respond to this request within 20 working days. Failure to timely comply may result in the filing of a civil action against your agency in the United States District Court for the District of Columbia. Please note that the denial of expedited processing should not interfere with the normal processing of these requests.

If you deny all or part of this request, please cite the specific exemptions you believe justifies your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out".

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at either (202) 498-0011 or my law office at (202) 454-2809.

Finally, please have all return correspondence addressed specifically to my attention to ensure proper delivery.

Sincerely,



Mark S. Zaid/
Executive Director

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

Boening v. CIA, Civil Action No. 07-0430 (EGS)

EXHIBIT “1”

Declaration of Franz Boening

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRANZ BOENING

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY

Defendant.

Civil Action No: 07-430 (EGS)

DECLARATION OF FRANZ BOENING

The undersigned hereby declares as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I am the plaintiff in this action and make this Declaration on personal knowledge. This Declaration is submitted in support of my Opposition to Defendants' Motion to Dismiss.¹
2. I was formerly employed by the Central Intelligence Agency (CIA) from 1980 – 2005. After learning Arabic in the early 1980s, I spent nearly one dozen years in agent operations, primarily in the Middle East. I worked declassification issues from 1995 – 1999, and ultimately retired from the Agency after working at the Foreign Broadcast Information Service where I handled Internet exploitation and training. I have held a Top Secret/Sensitive Compartmented security clearance for nearly 25 years (in fact, I continue to still hold my clearance as a contractor working at CIA). As a result of the matters addressed herein I became a whistleblower and suffered employment retaliation, some of which are described below.

¹ Per the requirements of my secrecy agreement, this document has been submitted for classification review and the contents, unless noted otherwise, have been deemed unclassified and approved for public filing.

3. In 1980, when I entered onto duty with the CIA I signed a secrecy agreement in which I agreed to pre-publication review of any intelligence related documents that I might author after leaving government service. This was the only secrecy agreement I executed while a CIA employee. I agreed not to reveal any CIA classified information and I have observed the agreement. However:

- I did not agree to any specific type of CIA formatting for my documents;
- I did not agree to append tortuously worded disclaimers;
- I did not agree to never criticize the CIA;
- I did not agree to withhold reporting of apparently felonious activity by CIA that is publicly discussed in declassified documents that originated with other federal agencies;
- I did not agree to never write a whistleblower complaint;
- and I did not agree to refrain from citing and quoting published newspaper and magazine articles in my criticism.

My secrecy agreement deals strictly with properly classified CIA information. I made no other legal promises to CIA.

4. This lawsuit primarily pertains to my whistleblower complaint of May 10, 2001, which I will refer to as the "M Complaint" (a designation that the CIA and I have utilized with approval in unclassified correspondence). I drafted the "M Complaint" in the spring of 2001 after reading a number of publicly available newspaper and magazine articles since autumn 2000 about political scandals in [one word deleted by CIA] country [six words deleted by CIA]. I have long taken a personal interest in Latin American

developments and in human rights issues. I have visited several countries in the area and speak serviceable Spanish.

5. As I read the domestic and international news accounts I became angered not just by the level of narco-corruption in this particular country and the hidden brutality of the regime in question, but also by the constant reminder that, according to the scores of credible published media accounts, my employer, the CIA, had nurtured and supported [one word deleted by CIA] for years.

6. [eight lines deleted by CIA]

7. According to the same media accounts I read, many of which are attached to my declaration as Exhibits "A" through "OOO" (these documents were ultimately submitted to the CIA's Publication Review Board (PRB) as part of the review process), [seven lines deleted by CIA].

8. I decided to monitor, during my own personal time, the unfolding political scandal because of my strong sense of civic responsibility combined with my personal irritation. I did this because I knew that if what I had read was even 50% true, I would take it upon myself to document an apparently gargantuan intelligence failure.

9. Why would a CIA officer do this when it had little or nothing to do with his present assignment? Because by 2001, I had devoted over 20 years of my life to the CIA and I owed it to the American taxpayers to call my employer to account. It made me livid that CIA was so inept, that it may have been party to human rights violations and, even worse, that it seemed entirely possible that CIA had been criminally involved with [one word deleted by CIA]. After all, for whom did I work? The American taxpayer or for an organization that might engage in criminal activity and hide behind the flag? Was it not

my civic duty to draft a professional complaint in which I outlined my credible evidence of intelligence failure and wrongdoing?

10. It is important to note that during this period I worked in the Foreign Broadcast Information Service (FBIS) as a Mideast media analyst (I did the original mapping of the Arabic-language network of jihadist bulletin boards). I had absolutely no professional responsibility whatsoever for Latin American affairs nor did I have computer or other access to any type of classified, compartmented CIA operational information on Latin America.

11. I can swear that not one word of my May 10, 2001 memorandum is based on any classified CIA document on [one word deleted by CIA], or on any information I received as a result of my employment with the CIA. Indeed, in my entire life I have never read a single classified CIA document (apart from official responses to my complaint which classified publicly available newspaper and magazine articles) wherein [one word deleted by CIA] was mentioned. Everything in my May 10, 2001 memo is based on open source information from newspaper or magazine accounts, or officially declassified information from other federal agencies that I obtained via the Internet. Additionally, the "classified annex" that accompanied the "M Complaint" was styled that way as a precaution, and not because I actually believed it did contain classified information. In fact, I explicitly challenge that it does not.

12. The CIA operates an extremely rigid, compartmented data system that prevents anyone without a need to know to access sensitive information. Thus, the insinuation that I may have surreptitiously entered into CIA's Latin America databases is completely baseless and utterly irresponsible. The CIA knows full well that accessing databases, at

least undetected, in such a manner is virtually impossible and was beyond my technical reach. Such an allegation, even if just an insinuation, further demonstrates the level at which the CIA will sink in order to cover-up its embarrassing conduct. Moreover, if the CIA even believed this to be true it never once raised the allegation during the four years (2001-2005) I spent inside the CIA discussing the "M Complaint". It never sought to discipline me for a security violation, or revoke my clearance. Nor did it interfere with the transfer of my security clearance, which the CIA continues to hold, for contracting work after I retired.

13. About a year after writing the "M Complaint", I was allowed to formally challenge its classification under rules established by EO 12,958 (or so I thought at the time). CIA informed me that it had formally accepted my challenge in Summer 2002, and implicitly acknowledged that the "M Complaint" was an official document. By Fall 2002, however, after the process had run its course inside the Agency and the latter had refused to declassify any material, I requested, in keeping with rules established by the EO as I understood them, to have the document forwarded to the Inter-Agency Security Classification Appeals Panel (ISCAP) in Washington, D.C., then chaired by William Leonard, which supposedly had jurisdiction over the challenge.

14. Significantly, within weeks of making this request, on December 13, 2002, CIA annulled my official classification challenge in its entirety. Beginning in December 2002, CIA suddenly asserted that my "M Complaint" was not really an official document; rather, it was a personal document. And, according to the CIA, personal documents could not be submitted to ISCAP, nor could they be published while the author remained an employee.

15. I protested the cancellation of the challenge to the ISCAP. Ultimately, as I understand it, the ISCAP Panel agreed with me and ordered CIA to deliver the document to it. CIA refused to do so. Sometime later, ISCAP chairman William Leonard visited the CIA where officials apparently persuaded him that I did not really have the right to write a whistleblower complaint on Latin America since I did not work in that field and was not an "authorized holder" of the specific classified information. Moreover, it was my understanding they falsely insinuated to him that I may have broken into databases in order to obtain material contained in the document. The result was that ISCAP seemingly relented and changed its position.

16. No doubt anyone reading this declaration is likely saying to themselves "why in the world would the CIA be so determined to withhold a series of overt newspaper and magazine articles and claim they were classified?" Why did my writing a memorandum alleging government misconduct based solely on public sources cause the CIA such consternation? I was provided the answer in May 2002 during a conversation with the then Information Release officer of the CIA's Directorate of Operations, William McNair. He told me privately in his office the real reason he would continue to classify the "M Complaint". With his voice tinged by exasperation he said something very close to the following:

"Look, Franz, do you think I care about [two words deleted by CIA]? This is not about 'source protection,' this is about CIA's reputation. We don't want you to have any credibility. The problem with the "M" memorandum is that what you've written is all true."

McNair also privately acknowledged during the same conversation that my May 10, 2001 memo was based solely on open source information and that it seemed to be reasonably well-sourced.

17. Contrary to CIA's assertions that I did not source my May 10, 2001, memo, the document is actually sourced in quite amount of detail, as described below, although perhaps not according to the academic standards of Harvard University. At no time was I ever informed by the PRB that I needed to source my document in a specific manner or utilizing a particular method. Anyone who reads the document carefully will find a specific source and a date attached to most entries in the chronology and a full list of sources in the bibliography. The body of the "M Complaint" is based on the chronology. Moreover, as can be plainly seen in the e-mail June 30, 2006, the CIA conceded that I did demonstrate that my sources were all overt.

18. I personally delivered source documents to the PRB in the autumn of 2004 and then in Summer 2005. I was under the clear impression that I needed only to prove that my sources were overt and I wanted the documents released after I retired in August 2005. I discovered only a few days before retiring in August 2005 that absolutely no one in PRB had taken the time to review the materials I had submitted nearly one year earlier! As far as I know, they did absolutely nothing with the documents at all during that time. At my last meeting with the PRB on August 10, 2005, they now asserted that not only must I demonstrate that the sources were unclassified (which they privately acknowledged was the case) but that everything should be rewritten in a non-official format, that I must add their formal disclaimer, and that every entry in the chronology

must be formatted to their specifications (which are explained nowhere in their regulations). These concerns had never been raised before.

19. The CIA's primary concern, at least as how I interpreted their e-mail to me of June 30, 2006 and now their arguments before this Court, pertains to formatting design. For reasons they best understand the CIA does not want me to "publish" the memorandum in an official looking format, whatever that might be. Of course, the format I used for the May 10, 2001, is exactly the format I used for my March 24, 2003 and May 20, 2004 memorandums which have since been declassified and released in full (other than names of certain CIA officials).

20. Let me provide some explanatory information surrounding my source documentation for the "M Complaint". In understanding the sourcing of the "M Complaint" it is important to comprehend the specific sections of the document. Pages 1-8 contain a narrative description of the various crimes that I believed, based on my public source documentation, [one word deleted by CIA], and possibly CIA, committed. It is in a narrative format. Pages 9-21 comprise a historical chronology of the [one word deleted by CIA] situation listing 87 entries. Not one page of this section has been publicly released but I understand the Court has been provided with an unredacted copy it can review. Pages 22-23 are final comments by me and a call for investigation. Page 24-25 is a bibliography with 55 different listings plus an "about the author" statement. There is then a two page "Unclassified Annex: Myths Surrounding CIA's Relationship with [one word deleted by CIA]", and a two page "Unclassified Annex: Was [one word deleted by CIA] an Agent?". Finally, there is also a "Classified Annex" which remains classified in its entirety.

21. The chronology set forth within pages 9-21 is a key section for this Court to review. Nearly all entries in the chronology follow the same general format: First, the date of the incident or development in the **[one word deleted by CIA]** story is identified. Second a summary of incident, development, or pertinent fact in the **[one word deleted by CIA]** story is noted. Finally, a parenthetical remark containing usually two elements: a) the specific media source of the fact, development or incident and b) the author's comment and/or analysis of the fact or development. It was my belief that the chronological unfolding of the **[one word deleted by CIA]** debacle was easier to comprehend and digest in his chronological format. The format was very simple: date, development, source, author's comment. Most parenthetical entries contain a source and a comment. Some contain simply the source with no comment; a very small number contain a comment only. The full names of all of the media sources are listed in the bibliography. I should specifically note that all source documents were reviewed by CIA and all documents were linked to specific entries in the chronology. All of the source documents were eventually returned to me by the PRB.

22. All of the supporting documents that are attached as Exhibits "A" through "OOO" to this declaration are annotated according to the entry date in the chronology of the "M Complaint" or the paragraph number in the body of the document. For instance, some documents might say "para one". This means that it is a general fact that supports paragraph one of the "M Complaint", which asserts that the press claimed **[one word deleted by CIA]** had a relationship with CIA. Other supporting documents might say "44", "37", or "79". This means that the cited document corresponded to the 44th, or 37th or 79th entry in the "M Complaint" chronology. Additionally, for example, the first entry

in the chronology is from a long article written by [four words deleted by CIA]. I provided the PRB with a copy of the [one word deleted by CIA] article and in the "M Complaint", I provided a brief explanation of who [one word deleted by CIA] is. Throughout the document I wrote "source: [one word deleted by CIA]" to refer to the article as the source for information within a particular paragraph. Many entries within the "M Complaint" state "source: [one word deleted by CIA], various." [one word deleted by CIA] refers to the organization "[three words deleted by CIA]" and I submitted only one document from [one word deleted by CIA] as a source. Thus, by referencing this specific document I was identifying information from within the "M Complaint" as having primarily originated from that article, although there may also have been support from other sources that I submitted for the same factual assertion.

23. Finally, this Court should also be aware that after I drafted the "M Complaint", I was forced to author a series of follow-up complaints alleging that the CIA had retaliated against me. These complaints are also formal whistleblower memorandums and dated March 24, 2003 and May 20, 2004, as well as internal grievances dated January 16, 2003 and November 7, 2003. During the period after I drafted and submitted the "M Complaint", as just an example of some of the conduct, I was variously told by a number of different CIA managers that:

- I lacked the qualifications to serve abroad. Yet prior to submitting these whistleblower memorandums I had served successfully in a half-dozen different CIA foreign postings;
- I volunteered to serve in a particularly sensitive country in 2003. I happened to speak the language, which was in very short supply, particularly among CIA

officers. I was informed I was not fit to serve in that country because the CIA did not wish to read memorandums regarding any of its activities that I would find fault with. As it turned out, several very public scandals emerged from the CIA's activities in this country;

- I was grilled on the polygraph about my contacts with Congress, a practice that could be considered retaliation given that such contacts are a protected activity;
- I was very worthy of promotion to GS-14 – that is, if only I would keep my mouth shut. My supervisor at the time said I could do one thing to improve my chances for promotion - keep my mouth shut as “this would help a lot”;
- I should consider keeping my mouth shut in order to avoid further problems or conflicts within the CIA. In fact, one of the OIG investigators actually said this to me during an interview about my March 24, 2003 complaint;
- I should not talk to younger CIA officers and that I should be given a separate office in order to limit my contact with them. The supervisor who made this comment said she feared that I might criticize CIA's historical conduct to impressionable young officers;
- I was accused of allegedly threatening an office colleague by leaving a yellow Post-it note asking that she be consistent in her editing. CIA's Office of Security investigated and found no merit in the charge. This baseless accusation was nothing more than an intentionally designed form of harassment; and
- I was publicly humiliated by the head of a CIA office when he attributed work to another employee that he knew I had undertaken.

24. Was I retaliated against? From 1980 to 1993, I was promoted on average once every 2.5-3.0 years. After filing my first informal human rights complaint in 1994, and the series of whistleblower complaints in later years, I never once received another promotion during the time I served with the CIA. Not once in 12 years, from 1993-2005.

25. I strongly believe, based on my over 25 years of CIA experience, that CIA wants to keep my May 10, 2001, memorandum classified because its contents reveal an undeniable intelligence failure involving illegal actions (and despicable human rights violations) by an individual with whom the CIA had close relations and disclosure of this information would prove excruciatingly embarrassing to the organization.

26. The [one word deleted by CIA] case in 2007, minor as it may seem to some observers, is an outrageous example of the lengths to which CIA will go to extinguish criticism and to negate my First Amendment rights. In the process the CIA will classify scores of media articles, all of which were produced by non-CIA (and even non-governmental and non-American) authors.

27. Finally, I should also note that I fully intend to continue submitting writings to the PRB for classification review. In fact, I submitted a document for review on November 12, 2007.

28. In closing, when I retired from the CIA in August 2005, I received a warm personal letter from then Director of Central Intelligence Porter Goss that said, in part:

... It takes the conscientious efforts of many people to do the important work of this Agency. You leave with the knowledge that you have personally contributed to our success in carrying out our mission. Your dedication and loyal support has measured up to the high ideals and traditions of the Federal service. May I express to you my appreciation and extend my best wishes for the years ahead."

I do solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge.

Date: November 12, 2007

/s/

Franz Boening

Boeing v. CIA, Civil Action No. 07-0430 (EGS)

DECLARATION OF
FRANZ BOENING

EXHIBITS
“A” – “OOOO”

**Withheld At The Request
Of The CIA**

TELECOPIER TRANSMITTAL SHEET

TO: Mr. Scott A. Koch
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SUBJECT: Boening Exhibit

DATE: December 5, 2007

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET): 18

MESSAGE/CONTENTS:

PLEASE SEE ATTACHED.

2007 DEC -5 PM 4:00

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